

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1112**

**Introduced by Assembly Member Cohn**

February 22, 2005

---

An act to amend Section 647 of the Penal Code, relating to loitering.

LEGISLATIVE COUNSEL'S DIGEST

AB 1112, as amended, Cohn. Loitering: transit facilities.

Existing law establishes various loitering offenses.

This bill would provide that every person who ~~loiters on or in any transit facility or other transit property is punishable as a misdemeanor~~ *is at, in, or on a public transit facility or building under circumstances that reasonably indicate that the person has committed, is committing, or is about to commit a crime, or under circumstances that reasonably indicate that the person is not present for the purpose of using public transit, is punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or by both that fine and imprisonment. This bill would provide that a peace officer may detain the person, who must identify himself or herself, but no longer than is reasonably necessary to ascertain the person's identity and the suspicious circumstances surrounding the person's presence, but in no event, longer than 60 minutes. This bill would also provide that the detention may not extend beyond the place or immediate vicinity of the place where the detention was first effected, unless the person is arrested.*

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 647 of the Penal Code is amended to  
2 read:

3 647. Every person who commits any of the following acts is  
4 guilty of disorderly conduct, a misdemeanor:

5 (a) Who solicits anyone to engage in or who engages in lewd  
6 or dissolute conduct in any public place or in any place open to  
7 the public or exposed to public view.

8 (b) Who solicits or who agrees to engage in or who engages in  
9 any act of prostitution. A person agrees to engage in an act of  
10 prostitution when, with specific intent to so engage, he or she  
11 manifests an acceptance of an offer or solicitation to so engage,  
12 regardless of whether the offer or solicitation was made by a  
13 person who also possessed the specific intent to engage in  
14 prostitution. No agreement to engage in an act of prostitution  
15 shall constitute a violation of this subdivision unless some act, in  
16 addition to the agreement, is done within this state in furtherance  
17 of the commission of an act of prostitution by the person  
18 agreeing to engage in that act. As used in this subdivision,  
19 “prostitution” includes any lewd act between persons for money  
20 or other consideration.

21 (c) Who accosts other persons in any public place or in any  
22 place open to the public for the purpose of begging or soliciting  
23 alms.

24 (d) Who loiters in or about any toilet open to the public for the  
25 purpose of engaging in or soliciting any lewd or lascivious or any  
26 unlawful act.

27 ~~(e) Who loiters or wanders upon the streets or from place to~~  
28 ~~place, or who loiters on or in any transit facility or other transit~~  
29 ~~property, without apparent reason or business and who refuses to~~

1 ~~identify himself or herself and to account for his or her presence~~  
2 ~~when requested by any peace officer so to do, if the surrounding~~  
3 ~~circumstances would indicate to a reasonable person that the~~  
4 ~~public safety demands this identification.~~

5 *(e) Who is at, in, or on a public transit facility or building*  
6 *under circumstances that reasonably indicate that the person has*  
7 *committed, is committing, or is about to commit a crime, or*  
8 *under circumstances that reasonably indicate that the person is*  
9 *not present for the purpose of using public transit. A peace*  
10 *officer may detain the person who the peace officer reasonably*  
11 *believes may be in violation of this subdivision only to ascertain*  
12 *the person's identity and the suspicious circumstances*  
13 *surrounding the person's presence. Detained persons must*  
14 *identify themselves, but may not be compelled to answer any*  
15 *other inquiry of the officer. The officer may not detain the person*  
16 *longer than is reasonably necessary to effect the purposes of this*  
17 *subdivision, but in no event, longer than 60 minutes. The*  
18 *detention may not extend beyond the place or immediate vicinity*  
19 *of the place where the detention was first effected, unless the*  
20 *person is arrested.*

21 *(f) Who is found in any public place under the influence of*  
22 *intoxicating liquor, any drug, controlled substance, toluene, or*  
23 *any combination of any intoxicating liquor, drug, controlled*  
24 *substance, or toluene, in a condition that he or she is unable to*  
25 *exercise care for his or her own safety or the safety of others, or*  
26 *by reason of his or her being under the influence of intoxicating*  
27 *liquor, any drug, controlled substance, toluene, or any*  
28 *combination of any intoxicating liquor, drug, or toluene,*  
29 *interferes with or obstructs or prevents the free use of any street,*  
30 *sidewalk, or other public way.*

31 *(g) When a person has violated subdivision (f), a peace officer,*  
32 *if he or she is reasonably able to do so, shall place the person, or*  
33 *cause him or her to be placed, in civil protective custody. The*  
34 *person shall be taken to a facility, designated pursuant to Section*  
35 *5170 of the Welfare and Institutions Code, for the 72-hour*  
36 *treatment and evaluation of inebriates. A peace officer may place*  
37 *a person in civil protective custody with that kind and degree of*  
38 *force which would be lawful were he or she effecting an arrest*  
39 *for a misdemeanor without a warrant. No person who has been*  
40 *placed in civil protective custody shall thereafter be subject to*

1 any criminal prosecution or juvenile court proceeding based on  
2 the facts giving rise to this placement. This subdivision shall not  
3 apply to the following persons:

4 (1) Any person who is under the influence of any drug, or  
5 under the combined influence of intoxicating liquor and any  
6 drug.

7 (2) Any person who a peace officer has probable cause to  
8 believe has committed any felony, or who has committed any  
9 misdemeanor in addition to subdivision (f).

10 (3) Any person who a peace officer in good faith believes will  
11 attempt escape or will be unreasonably difficult for medical  
12 personnel to control.

13 (h) Who loiters, prowls, or wanders upon the private property  
14 of another, at any time, without visible or lawful business with  
15 the owner or occupant. As used in this subdivision, “loiter”  
16 means to delay or linger without a lawful purpose for being on  
17 the property and for the purpose of committing a crime as  
18 opportunity may be discovered.

19 (i) Who, while loitering, prowling, or wandering upon the  
20 private property of another, at any time, peeks in the door or  
21 window of any inhabited building or structure, without visible or  
22 lawful business with the owner or occupant.

23 (j) Who lodges in any building, structure, vehicle, or place,  
24 whether public or private, without the permission of the owner or  
25 person entitled to the possession or in control of it.

26 (k) (1) Any person who looks through a hole or opening, into,  
27 or otherwise views, by means of any instrumentality, including,  
28 but not limited to, a periscope, telescope, binoculars, camera,  
29 motion picture camera, or camcorder, the interior of a bedroom,  
30 bathroom, changing room, fitting room, dressing room, or  
31 tanning booth, or the interior of any other area in which the  
32 occupant has a reasonable expectation of privacy, with the intent  
33 to invade the privacy of a person or persons inside. This  
34 subdivision shall not apply to those areas of a private business  
35 used to count currency or other negotiable instruments.

36 (2) Any person who uses a concealed camcorder, motion  
37 picture camera, or photographic camera of any type, to secretly  
38 videotape, film, photograph, or record by electronic means,  
39 another, identifiable person under or through the clothing being  
40 worn by that other person, for the purpose of viewing the body

1 of, or the undergarments worn by, that other person, without the  
2 consent or knowledge of that other person, with the intent to  
3 arouse, appeal to, or gratify the lust, passions, or sexual desires of  
4 that person and invade the privacy of that other person, under  
5 circumstances in which the other person has a reasonable  
6 expectation of privacy.

7 (3) (A) Any person who uses a concealed camcorder, motion  
8 picture camera, or photographic camera of any type, to secretly  
9 videotape, film, photograph, or record by electronic means,  
10 another, identifiable person who may be in a state of full or  
11 partial undress, for the purpose of viewing the body of, or the  
12 undergarments worn by, that other person, without the consent or  
13 knowledge of that other person, in the interior of a bedroom,  
14 bathroom, changing room, fitting room, dressing room, or  
15 tanning booth, or the interior of any other area in which that other  
16 person has a reasonable expectation of privacy, with the intent to  
17 invade the privacy of that other person.

18 (B) Neither of the following is a defense to the crime specified  
19 in this paragraph:

20 (i) The defendant was a cohabitant, landlord, tenant, cotenant,  
21 employer, employee, or business partner or associate of the  
22 victim, or an agent of any of these.

23 (ii) The victim was not in a state of full or partial undress.

24 (I) In any accusatory pleading charging a violation of  
25 subdivision (b), if the defendant has been once previously  
26 convicted of a violation of that subdivision, the previous  
27 conviction shall be charged in the accusatory pleading. If the  
28 previous conviction is found to be true by the jury, upon a jury  
29 trial, or by the court, upon a court trial, or is admitted by the  
30 defendant, the defendant shall be imprisoned in a county jail for  
31 a period of not less than 45 days and shall not be eligible for  
32 release upon completion of sentence, on probation, on parole, on  
33 work furlough or work release, or on any other basis until he or  
34 she has served a period of not less than 45 days in a county jail.  
35 In all cases in which probation is granted, the court shall require  
36 as a condition thereof that the person be confined in a county jail  
37 for at least 45 days. In no event does the court have the power to  
38 absolve a person who violates this subdivision from the  
39 obligation of spending at least 45 days in confinement in a  
40 county jail.

1 In any accusatory pleading charging a violation of subdivision  
2 (b), if the defendant has been previously convicted two or more  
3 times of a violation of that subdivision, each of these previous  
4 convictions shall be charged in the accusatory pleading. If two or  
5 more of these previous convictions are found to be true by the  
6 jury, upon a jury trial, or by the court, upon a court trial, or are  
7 admitted by the defendant, the defendant shall be imprisoned in a  
8 county jail for a period of not less than 90 days and shall not be  
9 eligible for release upon completion of sentence, on probation, on  
10 parole, on work furlough or work release, or on any other basis  
11 until he or she has served a period of not less than 90 days in a  
12 county jail. In all cases in which probation is granted, the court  
13 shall require as a condition thereof that the person be confined in  
14 a county jail for at least 90 days. In no event does the court have  
15 the power to absolve a person who violates this subdivision from  
16 the obligation of spending at least 90 days in confinement in a  
17 county jail.

18 In addition to any punishment prescribed by this section, a  
19 court may suspend, for not more than 30 days, the privilege of  
20 the person to operate a motor vehicle pursuant to Section 13201.5  
21 of the Vehicle Code for any violation of subdivision (b) that was  
22 committed within 1,000 feet of a private residence and with the  
23 use of a vehicle. In lieu of the suspension, the court may order a  
24 person's privilege to operate a motor vehicle restricted, for not  
25 more than six months, to necessary travel to and from the  
26 person's place of employment or education. If driving a motor  
27 vehicle is necessary to perform the duties of the person's  
28 employment, the court may also allow the person to drive in that  
29 person's scope of employment.

30 SEC. 2. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the  
35 penalty for a crime or infraction, within the meaning of Section  
36 17556 of the Government Code, or changes the definition of a  
37 crime within the meaning of Section 6 of Article XIII B of the  
38 California Constitution.